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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,198	07/22/2003	Richard King Teague	1370-5 DIV	7737
23869	7590	07/01/2005	EXAMINER	
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			TATE, CHRISTOPHER ROBIN	
			ART UNIT	PAPER NUMBER
			1655	

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/624,198

Applicant(s)

TEAGUE ET AL

Examiner

Christopher R. Tate

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>0703</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Claims 1-19 are presented for examination on the merits.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abbott et al. (US 6,007,023), in view of Medina et al. (Cereal Chem., 1990).

A method of obtaining/providing an extract containing at least one simmondsin therein via contacting at least a portion of a jojoba plant with an organic solvent; heating the solvent/plant portion mixture, separating the organic solvent from the insoluble plant portion, concentrating the organic solvent by applying heat, and removing further solvent therefrom is claimed.

Abbott et al. teach a method of obtaining a simmondsin-containing concentrate from the jojoba plant via extracting a dried water extract from defatted jojoba meal (please note that the dried water extract reads upon a portion of a jojoba plant) using aqueous ethanol and/or absolute ethanol under stirring (agitation) conditions, whereby the temperature of the ethanolic extraction can be higher (e.g., 36°C) than ambient temperature (reads upon heating the solvent/plant portion mixture); separating the insoluble portion (e.g., by filtration, centrifugation, etc); and concentrating/removing the solvent therefrom using a variety of conventional techniques

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including distillation, vacuum oven drying, spray-drying, or a combination thereof; (see, e.g., col 3, line 31 - col 6, line 28). Abbott et al. further teach that the residue remaining after the first ethanolic/drying steps may alternatively be exposed to additional ethanolic solvents (which reasonably reads upon instant claim 12 with respect to combining the solvent/plant mixture with a suitable carrier) - see, e.g., col 5, lines 31-49. In addition, Abbott et al. teach preparing the initial defatted jojoba meal using conventional techniques such as extracting the jojoba meal with hexane. However, Abbott et al. do not expressly teach what conventional defatting techniques are employed.

Medina et al. teach preparing defatted jojoba meal via extracting the meal with hexane in a Soxhlet apparatus (please note that the extraction temperature therein is well recognized in the art to inherently be at elevated vapor distillation temperatures and, thus, reads upon heating the jojoba meal/hexane mixture) then drying to remove the solvent therefrom (see, e.g., page 476 - first paragraph under Materials and Methods section).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to obtain a simmondsin-containing concentrate from jojoba plant material such as from a dried water extract thereof via contacting the dried water extract with an ethanolic solvent at elevated temperatures, separating the insoluble portion therefrom, and concentrating the solvent mixture via heating (e.g., distillation or oven drying) followed by spray-drying, based upon the beneficial teachings provided by Abbott et al., as discussed above; as well as providing other suitable working conditions within such preparatory methods, as disclosed therein. It would also have been obvious to one of ordinary skill in the art to prepare an initial defatted dried (concentrated) extract from jojoba meal via heating (e.g., in a soxhlet apparatus) the jojoba

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meal in a solvent such as hexane, separating the insoluble material from a resulting jojoba meal/solvent mixture, and concentrating the mixture (or the subsequent dried water extract thereof) by employing conventional drying techniques (e.g., heating then spray-drying) to form a dried concentrate thereof based upon the beneficial teachings provided by Abbott et al. and Medina et al., as discussed above. The result-effective adjustment of particular conventional working conditions (e.g., determining appropriate temperature, pressure, and/or drying parameters) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tang et al. (US 6,620,442).

Tang et al. teach methods of preparing simmondsin-containing concentrates from the jojoba plant via extracting defatted or partially defatted jojoba meal using a solvent such as one or more concentrations of aqueous ethanol under agitation conditions, whereby the temperature of the solvent extraction can be up to 100°C (thus, reads upon heating the solvent/plant portion mixture); separating the insoluble portion therefrom (e.g., by filtration, centrifugation, etc), as well as optionally combining the separated solvent mixture with a carbonaceous carrier, and concentrating the solvent mixture using a variety of conventional techniques including evaporation, distillation, vacuum oven drying, spray-drying, etc (see, e.g., col 3, line 7 - col 6, line 20).

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It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to obtain a simmondsin-containing concentrate from jojoba plant material such as defatted or partially defatted jojoba meal via contacting the meal with an ethanolic solvent at elevated temperatures, separating the insoluble portion therefrom, and concentrating the solvent mixture via heating (e.g., distillation or oven drying), as well as optionally combining the separated solvent mixture with a carbonaceous carrier, followed by spray-drying, based upon the beneficial teachings provided by Tang et al., as discussed above. The result-effective adjustment of particular conventional working conditions (e.g., determining appropriate temperature, pressure and/or drying parameters) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Thus, the invention as a whole is prima facie obvious over the reference, especially in the absence of evidence to the contrary.

### **Conclusion**

No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Tate whose telephone number is (571) 272-0970. The examiner can normally be reached on Mon-Thur, 6:30-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher R. Tate  
Primary Examiner  
Art Unit 1654